In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 268

THE SUGAR INSTITUTE, INC., ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

MEMORANDUM IN OPPOSITION TO APPELLANTS' MOTION TO BE RELIEVED OF OBLIGATION OF PRINTING EXHIBITS

Appellants have designated for printing the entire record except appellants' and appellee's exhibits (R. 1170). The United States has designated as additional parts of the record to be printed certain Government exhibits and portions of others (R. 1170), representing 2,619 typewritten pages of the 9,020 pages of Government exhibits. The Clerk of this Court has an estimate from the printer that the exhibits so designated, if printed, will probably not exceed 1,950 pages.

The exhibits designated for printing by the Government consist largely of letters and telegrams written by appellants. They constitute the primary evidence of the restraints enjoined. There are at least 28 different classes of such restraints (R. 321–325), all of which appellants controvert. A large part of the Government's brief will be devoted to a discussion of its exhibits and their implications; in fact, most of the proof on which the Government relies is contained in its exhibits. Much of the oral testimony merely explains or supplements the exhibits. The relative importance of the exhibits and of the oral testimony may be judged by the fact that the District Court in its opinion (R. 86–260) made constant reference to the exhibits and cited more than 140 different ones, whereas the opinion referred only occasionally to the oral testimony, and then generally to point to its bearing upon one or more exhibits.

The narrative statement of the evidence has been reduced, with the active cooperation of the Government, to 807 pages (R. 361–1168), of which 583 pages (R. 585–1168), or over 70%, constitute appellants' evidence. On the other hand, substantially over 70% of the exhibits filed in the District Court are Government exhibits. If appellants' motion is granted, the effect will be that both the court and counsel will have ready and convenient access to the material upon which appellants principally rely without similar ready and convenient

access to the material which is the foundation of the Government's case. Moreover, the court, upon the basis of the record in its present incomplete form, is likely to obtain an unbalanced and one-sided picture of the case.

The Government will be substantially prejudiced in the preparation of its brief and its oral argument if it is compelled to work with one set of exhibits constituting an unwieldy mass of documents easily displaced or mislaid. The parties have hitherto found it necessary from time to time to loan each other particular exhibits missing from the other party's files. Failure to print the designated exhibits would necessitate unduly expanding the Government's brief by extensive quotations from and explanations of exhibits.

It is submitted that failure to print any exhibits will seriously handicap this Court in reviewing the briefs filed by the parties, in following the oral arguments of counsel, and in its final consideration of the case. Most of the record has to be read in connection with or in the light of the exhibits and unless those indicated by the Government are printed, they will not be conveniently or simultaneously accessible to all members of the Court.

The Government takes issue with the statement in appellants' motion (p. 5):

> All exhibits have been assembled in numerical order in a series of neat, clearly labelled folders with a convenient number of exhibits in each separate folder.

Examination of the original exhibits filed with this Court discloses the following:

All of the Government exhibits except a few lengthy ones are bundled together in three large packages, each package merely tied around with ribbon. In these bundles there are no "clearly labelled folders" nor, in fact, folders of any kind separating particular exhibits. The first bundle commences with Exhibit 28 and ends with Exhibit 374, a total of about 350 exhibits; the second begins with Exhibit 375 and ends with Exhibit 452–z–2, a total of about 1,175 exhibits; the third begins with Exhibit 454 and ends with Exhibit 533, a total of about 435 exhibits.[1]

Some of the exhibits are difficult to read because of small type, and others because they are photostats of original documents, which were in poor condition. Furthermore, the present printed record contains no index of exhibits.

The sole reason advanced by appellants for being relieved of printing the exhibits designated by the Government is the estimated additional expense of $4,615 (including the Clerk's fee) involved in such printing. In view of appellants' prior expenditures in this case[2], its resources, and the interests at stake, this sum is altogether negligible. The Sugar Institute, Inc., has spent an average of

[1] There are many instances of sublettering, for example, Ex. 400, Ex. 400 a, Ex. 400 b, Ex. 400 c, etc.

[2] The trial in the District Court occupied six months of the court's time and extended over a period of almost one year.

$450,000 annually in an advertising campaign (R. 273). In 1930, the only year for which its total expenditures are shown, it spent over $838,000 (R. 273, Exs. 21–26, p. 609). In recent years the wholesale value of appellants' output has been as high as $500,000,000 (R. 87). Under these circumstances it is somewhat difficult to understand appellants' apparent concern over the question of an additional expenditure of less than $5,000. Certainly this additional expense is not comparable to the importance of convenient access and ready reference to the exhibits which the Government will rely upon and ask this Court to consider.

It is respectfully submitted that appellant's motion to be relieved of the obligation of printing exhibits should be denied.

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OCTOBER 1935.

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